



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 300

[Docket No. 210603-0121]

RIN 0648-BJ86

### International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Implementation of Emergency Decisions of the Western and Central Pacific Fisheries Commission

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Interim final rule; temporary specifications; request for comments.

**SUMMARY:** This interim final rule establishes a framework to implement short-notice decisions of the Commission on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Commission or WCPFC). Using the framework established through this interim final rule, this action also includes temporary specifications to implement three short-notice WCPFC decisions. NMFS is undertaking this action under the authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act) to satisfy the obligations of the United States as a Contracting Party to the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention). NMFS seeks comments on this interim final rule and will respond to those comments in a subsequent final rule.

**DATES:** *Effective date:* This interim final rule is effective on [Insert date of publication in the FEDERAL REGISTER].

*Temporary specifications:* The temporary specifications set out in the preamble are in effect from [Insert date of publication in the *FEDERAL REGISTER*] until September 14, 2021.

*Comment due date:* Comments on the interim final rule must be submitted in writing by [Insert date 30 days after date of publication in the *FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments on the interim final rule, identified by NOAA-NMFS-2020-0150, and the regulatory impact review (RIR) prepared for the interim final rule, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2020-0150 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, might not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name and address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Copies of the RIR, the programmatic environmental assessment (PEA), 2019 supplemental environmental assessment (SEA), and 2021 SEA prepared for National Environmental Policy Act (NEPA) purposes are available at [www.regulations.gov](http://www.regulations.gov) or may

be obtained from Michael D. Tosatto, Regional Administrator, NMFS PIRO (see address above).

**FOR FURTHER INFORMATION CONTACT:** Rini Ghosh, NMFS PIRO, 808-725-5033.

**SUPPLEMENTARY INFORMATION:**

**Background on the Convention**

The Convention is concerned with the conservation and management of highly migratory fish stocks (HMS) and the management of fisheries for HMS. The objective of the Convention is to ensure, through effective management, the long-term conservation and sustainable use of HMS in the western and central Pacific Ocean (WCPO). To accomplish this objective, the Convention established the Commission, which includes Members, Cooperating Non-members, and Participating Territories (collectively referred to here as “members”). The United States of America is a Member. American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands are Participating Territories.

As a Contracting Party to the Convention and a Member of the Commission, the United States implements, as appropriate, conservation and management measures adopted by the Commission and other decisions of the Commission. The WCPFC Implementation Act (16 U.S.C. 6901 *et seq.*), authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the United States Coast Guard is operating (the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention, including the decisions of the Commission. The WCPFC Implementation Act further provides that the Secretary of Commerce shall ensure consistency, to the extent practicable, of fishery management programs administered under the WCPFC Implementation Act and the Magnuson-Stevens Fishery

Conservation and Management Act (MSA; 16 U.S.C. 1801 *et seq.*), as well as other specific laws (see 16 U.S.C. 6905(b)). The Secretary of Commerce has delegated the authority to promulgate regulations under the WCPFC Implementation Act to NMFS. A map showing the boundaries of the area of application of the Convention (Convention Area), which comprises the majority of the WCPO, can be found on the WCPFC website at: [www.wcpfc.int/doc/convention-area-map](http://www.wcpfc.int/doc/convention-area-map).

### **Background on WCPFC Emergency Decisions**

On March 27, 2020, in response to public health concerns related to the COVID-19 pandemic, NMFS published an emergency rule providing authority to waive certain observer requirements (85 FR 17285). This rule was subsequently extended through March 26, 2022 (86 FR 16307; March 29, 2021). On April 8, 2020, in response to the international concerns over the health of observers and vessel crews due to COVID-19, the Commission made an intersessional decision to suspend the requirements for observer coverage on purse seine vessels on fishing trips in the Convention Area through May 31, 2020. The Commission subsequently extended that decision several times, and the current extension is effective until August 15, 2021.

NMFS regulations at 50 CFR 300.223(e) implement a WCPFC requirement for 100 percent WCPFC observer<sup>1</sup> coverage on purse seine vessels (with limited exceptions). Accordingly, in order to carry out the Commission's intersessional decision, NMFS has waived the requirement under 50 CFR 300.223(e) until August 15, 2021.

NMFS regulations at 50 CFR 300.216(b)(1) implement the WCPFC prohibition on at-sea transshipments for purse seine vessels. On April 20, 2020, in response to the international concerns over the health of vessel crews and port officials due to COVID-

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<sup>1</sup> A WCPFC Observer means a person authorized by the Commission in accordance with any procedures established by the Commission to undertake vessel observer duties as part of the Commission's Regional Observer Programme, including an observer deployed as part of a NMFS-administered observer program or as part of another national or sub-regional observer program, provided that such program is authorized by the Commission to be part of the Commission's Regional Observer Programme. See 50 CFR 300.211.

19, the Commission made an intersessional decision to modify this prohibition as follows - purse seine vessels can conduct at-sea transshipment in an area under the jurisdiction of a port State, if transshipment in port cannot be conducted, in accordance with the domestic laws and regulations of the port State. The Commission subsequently extended that decision and the current extension is effective until August 15, 2021.

NMFS regulations at 50 CFR 300.215(d) and 50 CFR 300.216(b)(2) implement WCPFC provisions regarding observer coverage for at-sea transshipments. On May 13, 2020, in response to the international concerns over the health of observers and vessel crews due to COVID-19, the Commission made an intersessional decision to suspend the requirements for observer coverage for at-sea transshipments. The Commission subsequently extended that decision and the current extension is effective until August 15, 2021.

NMFS anticipates that the Commission may make additional short-notice decisions in the near future that require immediate implementation and are temporary in nature. NMFS regulations at 50 CFR part 300, subpart O, implement multiple WCPFC decisions that are currently in force. The WCPFC Implementation Act authorizes NMFS to promulgate such regulations as may be necessary to carry out the United States' international obligations as a member of the Commission, including recommendations and decisions adopted by the Commission. However, NMFS does not currently have a process to quickly implement short-notice WCPFC decisions requiring immediate action that address relevant global or regional health, safety, and security concerns, as well as other international emergencies and crises.

## **The Actions**

*Interim Final Rule: Establishment of Framework to Implement Certain Decisions of the Commission*

This interim final rule establishes a framework through which NMFS may issue temporary specifications, each for a period less than one year in total, inclusive of all extensions, that promptly suspend or modify existing regulations in 50 CFR part 300, subpart O, which implement the United States' obligations under the Convention and WCPFC decisions. This framework allows NMFS to modify or suspend existing NMFS regulations in response to short-notice WCPFC decisions, including intersessional decisions that address relevant global or regional health, safety, and security concerns, as well as other international emergencies and crises. This framework helps ensure that NMFS regulations remain consistent with international obligations that may unexpectedly and quickly change in response to global events. NMFS does not intend to use this framework to implement WCPFC decisions that are routine and enter into effect at least 60 days after the decision is made, as specified in Article 20(5) of the Convention.

The process enables NMFS to implement short-notice WCPFC decisions through the issuance of temporary specifications that modify or suspend specific existing regulations at 50 CFR part 300, subpart O. As appropriate, temporary specifications may remain in effect up to 30 days after the expiration of the underlying WCPFC decision to allow NMFS adequate time to issue extensions or changes to the temporary specification, if needed, without unnecessarily exceeding the timeframe of the underlying WCPFC decision.

Any temporary specification issued pursuant to this framework will be published in the **Federal Register** and will include information regarding the basis for the modification or suspension (*i.e.*, a description of the WCPFC decision), the temporary modifications or suspension to the regulations, and the duration of the changes. Under the framework, NMFS may change (including extend, so long as the duration of the original temporary specification in addition to any extension is less than one year) any temporary specification by publishing a new temporary specification in the **Federal Register**.

NMFS may revoke any temporary specification by publishing a notification in the **Federal Register**.

NMFS reviewed the regulations at 50 CFR part 300, subpart O, implementing the Convention and WCPFC conservation and management measures, to identify reasonably foreseeable temporary specifications to the regulations in response to short-notice WCPFC decisions, including intersessional decisions, that address relevant global or regional health, safety, and security concerns, as well as other international emergencies and crises.

Temporary specifications issued under the framework in this interim final rule shall be limited to the following:

(1) Modifications or suspensions of the purse seine observer coverage requirements at 50 CFR 300.223(e), including suspensions of some or all of the requirements on a fleet-wide or individual vessel basis, requiring the carrying of observers other than WCPFC observers, requirements to carry electronic monitoring devices in lieu of observers, and requirements to collect and submit photographic or written information;

(2) Modifications or suspensions of the regulations at 50 CFR 300.216(b)(1) prohibiting at-sea transshipment for purse seine vessels, including suspensions of some or all of the prohibitions, prior notification for an at-sea transshipment, and suspension of the prohibitions for particular transshipments; and

(3) Modifications or suspensions of the regulations at 50 CFR 300.215(d) and 50 CFR 300.216(b)(2) regarding at-sea transshipment observer requirements, including suspensions of some or all of the requirements, suspension of some or all of the requirements for particular transshipments, requiring the carrying of observers other than WCPFC observers, requirements to carry electronic monitoring devices in lieu of observers, and requirements to collect and submit photographic or written information.

*Temporary Specifications: Implementation of Recent WCPFC Decisions that Need Immediate Implementation*

NMFS is using the framework established under the interim final rule to implement by temporary specification the three recent WCPFC intersessional decisions (WCPFC decisions dated April 8, 2020, April 20, 2020, and May 13, 2020), described above, that are in effect until August 15, 2021. Accordingly, the requirements of the following regulations are waived. Such waiver shall remain in effect until September 14, 2021, unless NMFS earlier rescinds or extends this waiver by publication in the **Federal Register**:

- 50 CFR 300.223(e)(1). During the term of this waiver, U.S. purse seine vessels are not required to carry observers on all fishing trips in the Convention Area. However, the regulations at 50 CFR 300.215(c)(1) that require all vessels with WCPFC Area Endorsements or for which WCPFC Area Endorsements are required to carry observers when directed by NMFS to do so remain in effect;
- 50 CFR 300.216(b)(1). During the term of this waiver, U.S. purse seine fishing vessels are not prohibited from at-sea transshipment conducted within the national waters of the coastal state, in accordance with applicable national laws. Transshipment on the high seas remains prohibited; and
- 50 CFR 300.216(b)(2) and 50 CFR 300.215(d). During the term of this waiver, owners and operators of U.S. commercial fishing vessels fishing for highly migratory species in the Convention Area are not prohibited from at-sea transshipment without an observer on board the offloading or receiving vessel.

**Classification**



The Administrator, Pacific Islands Region, NMFS, has determined that this interim final rule is consistent with the WCPFC Implementation Act and other applicable laws.

*Administrative Procedure Act*

There is good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment on the interim final rule and temporary measures included in this action, because prior notice and the opportunity for public comment would be contrary to the public interest. As stated above, three short-notice WCPFC decisions needing immediate implementation have already gone into effect and NMFS is implementing those three decisions through the framework process established under this interim final rule. In addition, it is likely that the WCPFC will agree upon additional short-notice decisions, which address relevant global or regional health, safety, and security concerns, as well as other international emergencies and crises, in the near future. The process established under this interim final rule would provide NMFS with the ability to carry out the obligations of the United States under the Convention, including promptly implementing the short-notice decisions of the Commission. NMFS will, however, consider and respond to public comments received on the interim final rule.

For the reasons articulated above, there is also good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective dates for the interim final rule and the temporary measures.

*Executive Order 12866*

This interim final rule has been determined to be not significant for purposes of Executive Order 12866.

*Regulatory Flexibility Act*

Because prior notice and opportunity for public comment are not required for the interim final rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. Therefore, no regulatory flexibility analysis was required and none has been prepared.

*Paperwork Reduction Act*

This interim final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

**List of Subjects in 50 CFR Part 300**

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: June 7, 2021.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service

For the reasons set out in the preamble, 50 CFR part 300 is amended as follows:

**PART 300—INTERNATIONAL FISHERIES REGULATIONS**

**Subpart O—Western and Central Pacific Fisheries for Highly Migratory Species**

1. The authority citation for 50 CFR part 300, subpart O, continues to read as follows:

**Authority:** 16 U.S.C. 6901 *et seq.*

2. In § 300.215, revise paragraph (d)(1)(iii), add paragraph (d)(1)(iv), revise paragraph (d)(2)(vi), and add paragraph (d)(2)(vii) to read as follows:

**§ 300.215 Observers.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(iii) The transshipment is an emergency, as specified under § 300.216(b)(4); or

(iv) The Pacific Islands Regional Administrator has by temporary specification published in the **Federal Register** modified or suspended the requirement to carry an observer for transshipments in accordance with § 300.228.

(2) \* \* \*

(vi) The transshipment is an emergency, as specified under § 300.216(b)(4); or

(vii) The Pacific Islands Regional Administrator has by temporary specification published in the **Federal Register** modified or suspended the requirement to carry an observer for transshipments in accordance with § 300.228.

\* \* \* \* \*

3. In § 300.216, add paragraph (b)(1)(iii) and revise paragraph (b)(2) introductory text to read as follows:

**§ 300.216 Transshipping, bunkering and net sharing.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iii) The restrictions in paragraphs (b)(1)(i) and (ii) of this section shall not apply to transshipments that are subject to a modification or suspension issued by the Pacific Islands Regional Administrator and published in the **Federal Register** under § 300.228.

(2) *Restrictions on at-sea transshipments.* This paragraph (b)(2) does not apply to transshipments meeting any of the following conditions: the transshipment is subject to a modification or suspension issued by the Pacific Islands Regional Administrator and published in the **Federal Register** under § 300.228; the transshipment takes place entirely within the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, and only includes fish caught within such waters; or, the transshipment takes place entirely within the Overlap Area, and only includes fish caught within such waters.

\* \* \* \* \*

4. In § 300.222, add paragraph (yy) to read as follows:

**§ 300.222 Prohibitions.**

\* \* \* \* \*

(yy) Fail to comply with the requirements of any temporary specification issued under § 300.228.

5. In § 300.223, revise paragraphs (e)(1) introductory text and (e)(1)(ii) and add paragraph (e)(1)(iii) to read as follows:

**§ 300.223 Purse seine fishing restrictions.**

\* \* \* \* \*

(e) \* \* \*

(1) A fishing vessel of the United States may not be used to fish with purse seine gear in the Convention Area without a WCPFC observer on board. The requirement in the preceding sentence does not apply to fishing trips that meet one of the following conditions:

\* \* \* \* \*

(ii) No fishing takes place during the fishing trip in the Convention Area in the area between 20° N. latitude and 20° S. latitude; or

(iii) The Pacific Islands Regional Administrator has by temporary specification published in the **Federal Register** modified or suspended the requirement to carry an observer in accordance with § 300.228.

\* \* \* \* \*

6. Add § 300.228 to read as follows:

**§ 300.228 Framework to implement emergency decisions.**

(a) *General.* To implement short-notice Commission decisions, including intersessional decisions, that address relevant global or regional health, safety, and security concerns, as well as other international emergencies and crises, the Pacific Islands Regional Administrator may, by temporary specification, modify or suspend regulations in this subpart for a period less than one year. A temporary specification under this paragraph (a) will remain in effect no longer than 30 days after the expiration of the underlying Commission decision.

(b) *Procedures for regulatory modifications or suspensions.* The Pacific Islands Regional Administrator will publish in the **Federal Register** each temporary specification issued under paragraph (a) of this section. The temporary specification will identify the basis for the modification or suspension (*i.e.*, a description of the Commission decision), the changes to the regulations, and the duration of the changes.

(c) *Procedures for revoking regulatory modifications or suspensions.* The Pacific Islands Regional Administrator may revoke any temporary specification issued under paragraph (a) of this section by notification published in the **Federal Register**.

(d) *Limitations on regulatory modifications or suspensions.* Temporary specifications issued under paragraph (a) of this section shall be limited to the following:

(1) Modifications or suspensions of the purse seine observer coverage requirements at § 300.223(e), including the Pacific Islands Regional Administrator's suspension of some or all of the requirements on a fleet-wide or individual vessel basis,

requiring the carrying of observers other than WCPFC observers, requirements to carry electronic monitoring devices in lieu of observers, and requirements to collect and submit photographic or written information;

(2) Modifications or suspensions of the regulations at § 300.216(b)(1) prohibiting at-sea transshipment for purse seine vessels, including suspensions of some or all of the prohibitions, prior notification to an address specified by the Pacific Islands Regional Administrator for an at-sea transshipment, and authority of the Pacific Islands Regional Administrator to suspend the prohibitions for particular transshipments; and

(3) Modifications or suspensions of the regulations at §§ 300.215(d) and 300.216(b)(2) regarding at-sea transshipment observer requirements, including suspensions of some or all of the requirements, the Pacific Islands Regional Administrator's authorization to suspend some or all of the requirements for particular transshipments, requiring the carrying of observers other than WCPFC observers, requirements to carry electronic monitoring devices in lieu of observers, and requirements to collect and submit photographic or written information.